

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:07-CR-85-BO
NO. 7:12-CV-340-BO

FILED

DEC 14 2012

ANTONIO TERELL MCALLISTER,)
 Petitioner,)
 v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)


JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
BY AL DEP CLK

ORDER

This cause comes before the Court on petitioner's request for review of case and motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner, Mr. McAllister, asserts that he is not guilty of having been a felon in possession of a firearm in violation of 18 U.S.C. § 922(g) in light of the Fourth Circuit's holding in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc). The government has responded to Mr. McAllister's motion, stating that it waives its reliance on the statute-of-limitations defense and that the Court should reach the merits of petitioner's claims [DE 34].

In light of the foregoing and the hearing held in this matter on December 14, 2012, the Court accepts the government's request and GRANTS Mr. McAllister's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 [DE 39]. Accordingly, the judgment and conviction entered in this matter on June 16, 2008 [DE 29], are hereby VACATED. Mr. McAllister is ORDERED to be released from federal custody forthwith.

SO ORDERED, this 14 day of December, 2012.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE